

**REMARKS**

The specification and claim 3 have been amended to substitute the more commonly used term “BRIX” for the “BRIC” designation previously in the specification and claim. It appears that BRIX is the preferred designation of this measure of sugar content which is defined in terms of grams sucrose per gram of solution. This substitution is made for the convenience of the reader and does not introduce new matter.

Claim 1 has been amended to insert the class of fungus that has been found to produce the plant-growth-regulating substances as previously claimed in claims 6 and 17. Accordingly, this limitation does not introduce new matter.

Claims 1, 2 and 10 have also been amended to clarify that denatured proteins must be removed from the culture filtrate in the composition useful in providing plant growth-regulating substances. This is supported, for example, in original claim 11, in Example 1 on page 12, and in paragraph 34, and throughout the specification.

Claims 21-23 and 25 have been retained and not canceled although directed to a non-elected invention, since applicant believes that should claims to the composition and formulation be allowed, these claims may be rejoined as methods to use the patentable formulation.

Entry of the amendment is respectfully requested.

Applicant appreciates the recognition that the subject matter of the claims is patentable over the art. Only formal rejections are advanced.

The discussion at the interview concluded that the proposed amendment would appear to overcome the rejections of record. However, for completeness, the outstanding rejections are discussed below.

The Rejection Under 35 U.S.C. § 112, First Paragraph

All examined claims were rejected on the basis of lack of written description of two terms: “fungal spawn” and “filtrate.”

As to fungal spawn, the class of fungi whose spawn is used to create the culture has now been specified in all independent claims. The nature of *Basidiomycetes*, the class of fungi now claimed is described; the nature of this class is set forth in paragraphs 23 and 24 in some detail. Respectfully, it is believed not proper to limit applicant to the preferred species or the exemplified species. It is noted that the basis for rejection is not enablement but written description. The nature of *Basidiomycetes* has been described in the specification. Accordingly, this basis for rejection may be withdrawn. Clearly, it never applied to claims 9 or 20.

With respect to “filtrate,” the specification defines what is meant in paragraph 35 – simply the liquid portion of the culture. It should be clear from this definition that applicant simply removed solids from the culture, and, since the filtrate is subsequently sterilized, the filtration is not for sterilization purposes, for example. As noted, it is also important also to remove any denatured proteins and to ensure that proteins contained in the liquid medium are denatured.

This issue was discussed at the interview, and Examiner Lankford kindly acknowledged that in view of the specified paragraph, the meaning of filtrate was adequately defined and the written description was sufficient.

For these reasons, it is believed that the rejection under 35 U.S.C. § 112, paragraph 1, may be withdrawn.

The Rejection Under 35 U.S.C. § 112, Second Paragraph

All claims were also rejected under this section of the statute on the basis of asserted vagueness of the term “filtrate.” The Office asserts that it is “well accepted in the art that filtration with one of various distinct filtration means has a profound impact on the final product with respect to the presence, absence, amounts and/or ratios of active ingredients therein.”

This statement may be true in general, but clearly is not the case in the context of the description of culture filtrate in the present application. The application makes clear that the filtrate is simply the liquid portion of the medium from which solids have been removed, not anything special in the way of treatment to remove infectious organisms, for example.

This aspect of the term “filtrate” was also discussed at the interview, and it was agreed that in view of the description in the specification, the term was clear.

Accordingly, applicant believes this basis for rejection may be withdrawn.

Conclusion

The claims have been amended for clarification, to include an essential feature (denaturation of proteins in the filtrate), and to limit them to the class of fungi that is successful in producing the desired ingredients. The description of “filtrate” in the specification has been pointed out. As there is no rejection over the art, it is believed that the examined claims, claims 1-20 and 24, may be passed to issue and claims 21-23 and 25 rejoined, and applicant appreciates the acknowledgement at the interview that this is the case. Examiner Lankford is again thanked for his courtesy and thoughtfulness.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any

Application No.: 10/622,026

Docket No.: 437472000300

required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit**

**Account No. 03-1952** referencing docket No. 437472000300.

Respectfully submitted,

Dated: August 16, 2006

By: Kate H. Murashige  
Kate H. Murashige  
Registration No. 29,959  
MORRISON & FOERSTER LLP  
12531 High Bluff Drive, Suite 100  
San Diego, California 92130-2040  
Telephone: (858) 720-5112  
Facsimile: (858) 720-5125